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**LEGAL PROTECTION OF INTERCEPTION OF COMMUNICATIONS
FOR THE SPECIAL MISSIONS BASED ON THE 1969 NEW YORK
CONVENTION ON SPECIAL MISSIONS**

**(CASE STUDY ON INTERCEPTION OF COMMUNICATIONS AGAINST
TURKEY SPECIAL MISSION IN 2009 LONDON G-20 CONFERENCE)**

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**LEGAL PROTECTION OF INTERCEPTION OF COMMUNICATIONS
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Abstrak

Penyadapan adalah tindakan mengambil informasi dari orang lain dengan cara melawan hukum. Penyadapan belum diatur secara khusus di dalam hukum internasional, tetapi apabila terjadi tindak penyadapan terhadap pejabat diplomatik maka hukum diplomatik dapat dijadikan dasar dalam pemberian payung hukum. Ketika konferensi G20 berlangsung di London pada tahun 2009 terjadi tindak penyadapan yang dilakukan oleh Inggris terhadap Menteri Keuangan Turki beserta delegasinya. Tindakan penyadapan tersebut merupakan *internationally wrongful act* sehingga muncul permasalahan bagaimana perlindungan hukum diplomatik terhadap Menteri Keuangan Turki beserta delegasinya yang ditinjau dari Konvensi New York tahun 1969 tentang Misi Khusus.

Kata Kunci: Penyadapan, hukum diplomatik.

Abstract

Interception of Communications is an act of retrieving information from the other party in a manner not in accordance with applicable law. Interception of Communications is not regulated specifically in international law, but if there happened to be interception of communications against diplomats, diplomatic laws may be the basis of giving diplomatic protection. When the G-20 Summit is held in London in 2009, British have done interception of communications against Turkish Financial Minister and his delegates. Interception of communications is a shape of internationally wrongful act, so the problem that emerge, how is the legal protection for Turkish Financial Minister and his delegates, based on 1969 New York Convention on Special Missions.

Key Word: Interception of Communications, diplomatic law.

A. Introduction

Montevideo Convention declared that states must have these four constitutive elements, there must be inhabitants (people, population, citizens), *nationalen, staatsburgers*, or nations (staatvolk); there must be authority over a territory; must be a supreme power (sovereign power), a sovereign government; ability to correspond with other states; and recognition (declarative).¹

The four elements according to the above are , there must be inhabitants, nation, associated with government body and the ability to correspond with other states are constitutive elements while the fifth element is an element of a declarative. The fourth element, the state must have the ability to communicate or to correspond and cooperate with other states. Among the five elements of the state, that needs to be considered, is the element of the ability to communicate or to correspond and cooperate with other states. The state should have the ability to communicate and cooperate with other states (bilateral and multilateral) in the field of economics, politics, culture, security and so on. This ability may be called diplomacy. At one point, diplomacy is used foreign policy , at other times it shows the negotiations, including the ability to conduct international negotiations, tactical guile and others. A state can not be entirely if the state can not fulfill the elements since the era of globalization requires all states to participate in the international community and the states can not stand alone without the assistance of other states.

The ability of state to communicate with other states are considered diplomatic action which is regulated in diplomatic laws. Diplomatic laws are principles of international law governing diplomatic relations between states that are made on the basis of agreement and provisions.² The example of diplomatic law is with in 1961 Vienna Convention on Diplomatic Relations and 1969 New York Convention on Special Missions. These conventions regulates on how states must act while running the diplomacy function and giving limitations at the same time.

¹ Samidjo, *Ilmu Negara*, CV. Armico, Bandung, 1986, hlm 34.

² Setyo Widagdo dan Hanif Nur Widhiyanti, *Hukum Diplomati dan Konsuler: Buku Ajar untuk Mahasiswa*, Bayumedia, Malang, 2008, hlm 6.

The states are not able to communicate with other states as an entity so that it would need representatives to act on its behalf, these representatives are considered diplomats. There are two types of diplomats, there are permanent diplomats (1961 Vienna Convention) and *ad hoc* diplomats (1969 New York Convention). Diplomats represent their states, so their actions are considered as the action of a state because diplomats are given authority as a shape of a manifested sovereignty. These diplomats are given privileges as a courtesy of diplomatic law. According to the opening of 1969 New York Convention on Special Missions, it stated, realizing that the purpose of privileges and immunities relating to special missions is not to benefit individuals but to ensure the efficient performance of the functions of special missions as missions representing the State.

Diplomats are given privileges and immunities to ensure the efficient performance of the functions and not for benefits. The example of provision that regulates privileges and immunities may be seen in Article 28 1969 New York Convention which stated, "The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. In communicating with the Government of the sending State, its diplomatic missions, its consular posts and its other special missions or with sections of the same mission, wherever situated, the special mission may employ all appropriate means, including couriers and messages in code or cipher. However, the special mission may install and use a wireless transmitter only with the consent of the receiving State; and The official correspondence of the special mission shall be inviolable. Official correspondence means all correspondence relating to the special mission and its functions." When diplomacy is held, the receiving State must protect the communication of the sending State in any condition. The receiving State doesn't have the authority to intercept the communications of the sending States in any means or condition.

According to the news, foreign politicians and officials who took part in two G20 summit meetings in London in 2009 had their computers monitored and their phone calls intercepted on the instructions of their British government hosts,

according to documents seen by the Guardian, some delegates including Turkey Finance Minister, were tricked into using internet cafes which had been set up by British intelligence agencies to read their email traffic.³

The British government action by intercepting the communications of some delegates including Turkey Finance Minister is an act of violation of international treaty. Turkey Finance Minister as a representative and an *ad hoc* diplomat has his rights to be protected by the receiving State and receive privileges and immunities according to diplomatic laws. The interception of communications case have pushed the writer to research on “**Legal Protection of Interception of Communications For The Special Missions Based on The 1969 New York Convention of Special Missions (Case Study on Interception of Communications Against Turkey Special Mission In 2009 London G-20 Conference)**”

B. Legal Issues

Based on Article 28 1969 New York Convention, The receiving State shall permit and protect free communication on the part of the special mission for all official purposes. The receiving State do not have authority to intercept the communications of the special mission. The British government action of intercepting communication of Turkey Finance Minister in the G20 Summit is a violation of international law.

According from the above, the problems are:

1. How is the legal protection for special missions whom is a victim of interception of communication based on 1969 New York Convention?
2. How is the state responsibility of the conference host on the interception of communications on special missions?

³ Nick Hopkins and Matthew Taylor, The Guardian, Jumat 20 September 2013 <http://www.theguardian.com/uk-news/2013/sep/20/edward-snowden-uk-spy-watchdog>, diakses pada tanggal 21 September 2013.

C. Research Method

Research Approach

Research conducted in this paper is a kind of normative research (normative legal research). This study focused on assessing the implementation of the rules or norms. Assessment in legal research is focused to determine the form of legal protection against diplomatic representatives who are victims of interception of communications under the 1969 New York Convention. The approach used in this study the statute approach and case approach.⁴

Legal Material

1. Primary Legal Materials

Primary legal materials are the primary legal materials are used as a reference or source of research studies. Primary legal materials in the study include:

- 1) 1961 Vienna Convention on Diplomatic Relations
- 2) 1963 Vienna Convention on Consular Relations
- 3) 1969 Vienna Convention on The Law of Treaties
- 4) 1969 New York Convention on Special Missions
- 5) 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents

2. Secondary Legal Materials

Secondary law is the law of material supporting the explanation, interpretation and development of primary legal materials. Secondary legal materials in this study include supporting literature in the form of legal documents or materials, papers, scientific journals, and freelance articles relating to the discussion on the theme of research, and news articles from the print media and the internet.

⁴ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Jakarta, 2005, hlm 93.

3. Tertiary Legal Materials

Tertiary legal materials are materials that are used as a complementary law explanation, interpretation and development of primary and secondary legal materials. Legal material in this study consists of a legal dictionary, English dictionary, and the Indonesian dictionary.

Method Collecting Legal Material

Secondary data retrieval techniques which include primary legal materials, legal materials and secondary legal materials tertiary in this study is the study of literature over the necessary legal materials which will then be identified and classified to analyze and answer the problem. Techniques collecting legal materials referred to above is obtained at the Center for Documentation and Information Law (PDIH) FH-UB, Malang Public Library, Read Smart Homes (RBC), LPM Library Manifest FH-UB, Rausyan Fekr, Private Collection and search through the internet.

Method Analyze Law Material

Legal materials obtained in the research literature studies and international law will be described and linked in such a way then categorized and arranged systematically in order to address concerns that have been formulated. Furthermore, the existing legal materials were analyzed by analysis techniques of interpretation, namely by interpreting the provisions that are the focus of this research through a variety of other rules relating to address existing problems. Interpretation of the analytical techniques used are grammatical interpretation, namely by outlining the provisions of the law according to the material of everyday language that is commonly used.

Systematic interpretation techniques are also used in this study, the interpretation of which is done by observing and examining the relationship between the chapter with another good article contained in the rules of

international law itself or contained in other rules as one unified whole to explain the meaning and purpose.⁵

Legal materials analysis techniques used in this study is a descriptive analysis technique, the method of research to describe or explain the subject and object of research of analyzing the facts of the legal form of primary legal materials, legal materials and secondary legal materials tertiary.⁶

D. Analysis

Legal Protection Against Diplomatic officials whom are the Victims of Interception of Communications Based Diplomatic Law

Interception of Communications is an act of retrieving information from the other party in a manner not in accordance with applicable law, Interception of Communications here equated with the right of freedom of communication or where one has the freedom to communicate without interruption. The ban on Interception of Communications has been widely adopted by many states in the national laws of states in the world, but the ban is limited within the jurisdiction of the state applying the ban on Interception of Communications.

When a state violates such action outside the jurisdiction of the victims, the force of international law is needed. That's when the role of international law in force, international law is the applicable law in the inter-state or public international law. In practice there is no international law that specifically regulates Interception of Communications but in international law there are limitations in conducting diplomacy contained in the general provisions that a diplomatic officer has the freedom of communication and should not be contested,

⁵ Bahder Johan Nasution, *Metode Penelitian Ilmu Hukum*, Mandar Maju, Bandung, 2008, hlm 96.

⁶ Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, Pustaka Pelajar, Yogyakarta, 2010, hlm 183.

by reason of the intercepts equated with freedom of communication. Diplomatic law applies in the diplomatic sphere so that the limit only applies in the event of interception in the diplomatic sphere between diplomatic agents or inter-state authority.

1. Diplomatic Law Binds Turkey and British

International agreement is an agreement between two or more subjects of international law regarding an object or a particular problem with the intent to form a legal relationship or bring forth the rights and obligations are governed by international law. Form of agreement between states poured in the form of a written law in force in the sphere of public international law. After the agreement the relevant states should be subject to agreements that have been established, but these states are not directly subject to the treaty only with the agreement. To make the agreement as a positive law or as part of the international law, states must provide a statement expressly or agreement to be bound to the agreement (consent to be bound by a treaty). Based on the provisions contained in Article 11 of the 1969 Vienna Convention on The Law of Treaties confirmed several ways to express agreement to be bound by a treaty, by signing (signature), the exchange of the instruments forming agreements (exchange of instruments constituting a treaty), ratification, acceptance, approval or accession or by any means if so agreed.

Diplomatic law is the law governing ethics in international relations. Keep in mind that the diplomatic law is part of international law, it is necessary to further understand how the binding nature of diplomatic law. In this paper, diplomatic law are provisions or principles of international law governing

diplomatic relations between states are made on the basis of agreement with and provisions or the principles set forth in the legal instruments as a result of the codification of customary international law and development of international relations.⁷

Tracing back to the 1969 Vienna Convention, Article 25 contains the *pacta sunt servanda* principle, which means significant agreement that binds the parties have agreed and must be run on the basis of good faith. The principle states that the parties have declared to be bound by international agreements must fulfill their rights and obligations. In practice, both Turkey and the United Kingdom have agreed to ratify diplomatic law as follows:

Table 1

Convention Ratified by Turkey and the United Kingdom

No	Convention	Ratification Date	
		Turkey	United Kingdom
1	Vienna Convention on Diplomatic Relations 1961	March 6, 1985	September 1, 1964
2	New York Convention on Special Missions 1969	December 17, 1970	December 17, 1970

Turkey and British have ratified both of the conventions above, they must respect both conventions by any means and conditions.

⁷ M. Marwan dan Jimmy P., *Kamus Hukum : Dictionary of Law Complete Edition*, Reality Publisher, Surabaya, 2009, hlm. 262

2. Legal Protection for Turkish Finance Minister

Based on the opening of 1969 New York Convention, stated, Realizing that the purpose of privileges and immunities relating to special missions is not to benefit individuals but to ensure the efficient performance of the functions of special missions as missions representing the State.

Other writers, more realistic in outlook, concede that the assignment of special envoys and missions of sovereign States to international congresses and conferences, which are becoming increasingly frequent, also constitutes ad hoc diplomacy in the form of special delegations and delegates, and they rightly regard this as a virtual revival of the institution of ad hoc diplomacy.⁸

The characteristic of diplomacy is that it represents the State in its relations with another State (or with other subjects of international law). The object of these relations is any situation in which the relation of sovereignty is manifest. Any action in this category is international in nature, and consequently political in nature also; for all such questions are complex, in that they have both a technical aspect and a political aspect, although the latter is not present to the same degree in all such matters.⁹

It emerges more clearly in some situations, less clearly in others, but it is nevertheless everywhere present, and any international relation is a relation between sovereignties. Whenever any international contact takes place, it is the duty or diplomacy to represent the State in relations of that kind, and therefore special missions and special delegates responsible for dealing with these problems are ad hoc diplomats. It may be that, apart from the general rules, certain special rules also apply to such diplomats, because of the specific nature of their functions, but their status must be, in substance, that of ad hoc diplomats, and everything

⁸ International Law Commission, *Document:- A/CN.4/166 Report on Special Missions by Mr. Milan Bartoš Special Rapporteur*. Topic: *Special Mission*, Downloaded from the web site of the International Law Commission (<http://www.un.org/law/ilc/index.htm>), United Nations, 1964, hlm. 72

⁹ *ibid* hlm.73

which in general, attaches to the status of ad hoc diplomats therefore, of necessity, applies also to them.¹⁰

Based on the above quotes, *Ad hoc* diplomacy has been growing very rapidly , but the absence of a theory that can keep track of when the practice of diplomacy . Special envoys and mission tasks countries to attend international congresses and conferences have been growing rapidly , the departure of the mission is a form of ad hoc diplomacy . The task of ad hoc diplomacy is not limited to political issues but also can be attributed to technical matters . The quotations above clarify the difference between permanent missions and temporary mission , the keywords that need to be located in said congress and international conferences . In international relations , and when it occurs in the form of representation at international conferences in congress or the representative of a country is not limited only to the resident diplomat , but the state can also send other representatives , diplomats resident representative who is not an ad hoc diplomat.

Turkish Financial Minister official visit to the British territory for attending G20 summit covers him as an *ad hoc* diplomat. Privileges and Immunities are bond to the Turkish Financial Minister so the British must protect his rights, specially the freedom of communication in Article 28 New York Convention 1969, which the British may not in many means necessary to Intercept his communication in any form.

Conference Host State Responsibility on The Victim of Interception of Communications

1. State's Responsibility

Based on *Draft articles on Responsibility of States for Internationally Wrongful Act*, British must be responsible for its actions for accomplishing these actions:

- a) British as host having an obligation to protect the rights and privileges of diplomatic immunity of delegates specially Turkish Finance

¹⁰ *Ibid.*

Minister along with his delegations. British interception of communications against the Turkish Finance Minister and the delegation then such actions indicate that the UK does not comply with the provisions of the New York Convention, where the act is a form of Internationally Wrongful Act.

- b) British accomplished interception of communications with the help of GCHQ by order of British Prime Minister. GCHQ and British Prime Minister is part of the state entity. International obligations are not fulfilled contained in the New York Convention.

The British must be responsible for its actions, there are certain forms of responsibility that may be done. There are several forms of reparation, mentioned in Article 35 and Article 36, namely restitution and compensation. Restitution is mandatory state responsible for the situation and restore the situation prior to the internationally wrongful act. Compensation or compensation, can be given for violations by a state, notwithstanding that the violation was not associated with loss are financial, such as a violation of the diplomatic or consular immunity.¹¹ On the basis of the principle of *ex gratia* which has been adopted by many states to provide compensation for any damages incurred as a result failure by host governments to protect foreign missions.¹²

Based on the above analysis, British as a conference host or the receiving state has done internationally wrongful act. Britain is said to have done internationally wrongful act because they have intercept communication against Turkish diplomatic officials meet the criteria in the provisions of the Draft articles on Responsibility of States for Internationally Wrongful Act. If Britain really is proven guilty then the UK is obliged to be responsible with how to stop its action if still ongoing and perform compensation as a result of his actions. Follow-up of the compensation can be done by the UK is doing financially compensation though their actions do not cause material damage.

¹¹ Jawahir Thontowi dan Pranoto Iskandar, *Hukum Internasional Kontemporer*, PT. Refika Aditama, Bandung, 2006.hlm. 204.

¹² Sumaryo Suryokusumo, *Op.Cit.*, hlm. 78.

2. Remedies Taken by Turkey Against England

In international law, there are several ways in alternative dispute resolution or in this case an international dispute resolution. Broadly speaking, the settlement of disputes in international law can be described as follows:¹³

1) In Peace:

a) Political Path:

i. Negotiation

ii. Mediation

iii. Good service (good offices)

iv. Inquiry

b) legal system

i. Arbitration

ii. International Court

2) Violence:

a) War

b) Non Wars: Termination of diplomatic relations, retorsi, blockade, embargo, and reprisal

Based on the above information , there are two ways of dispute resolution legal way . Turkey in taking manner in which the arbitration is a more flexible way , and if necessary they can take another step in a way to bring the case to the ICJ . By carrying case to the ICJ judges that there is a decision that can bind Turkey and England .

E. Conclusion

1. Interception of Communication is not regulated under international law , but in case of Interception of Communication against diplomatic officials then may refer to diplomatic law . British as the host state of the conference (the G20 summit) has the obligation to protect all participants especially diplomatic officials as state representative . The obligation is a commitment the UK as a country that has

¹³ Sefriani, *Hukum Internasional Suatu Pengantar*, PT. RajaGrafindo Permada, Jakarta, 2011, hlm. 325.

ratified the 1961 Vienna Convention and the 1969 New York Convention . Britain and Turkey has ratified the 1961 Vienna Convention on Diplomatic Relations and the 1969 New York Convention that the UK is obliged to fulfill its international obligations to protect diplomatic missions of Turkey , and Turkey as a sending country has its right to be protected by the convention . The mission by the Turkish Finance Minister along with his delegation to attend conferences in the UK is a form of a special mission because it is has a time limit or temporary and can be regarded as an ad hoc diplomacy . Ad hoc diplomacy set in the New York Convention 1969. The Minister of Finance Turkey is considered sacred under international law it is automatically the rights and privileges of diplomatic immunity attached to it when on an official visit . Interception of Communication actions undertaken by the British against the Turkish Finance Minister has violated the provisions of the Convention in New York in 1969 , especially sections Freedom Communications .

2 . Any violation of the provisions of the New York Convention in 1969 was a form of Internationally Wrongful Act due to non-fulfillment by the British International Obligation . England shall make compensation to Turkey . Turkey can take steps to resolve the dispute by peaceful means to resolve the problem with the UK .

F. Recommendation for Further Studies

1. Interception of Communication is done by the state against an act that violates the ethics of diplomacy that such actions must be stopped for the sake of inter-state sovereignty and maintain world peace.
2. Interception of Communication is not specifically regulated in international law so that the need for a new legal framework to fill the legal vacuum and to prevent the return of repeated acts of interception between states.
3. Britain and Turkey should resolve their problems in a peaceful way to maintain diplomatic relations between the two states.

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